IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE:06.1.2005

CORAM

THE HONOURABLE MR.JUSTICE A.K.RAJAN

Writ Petition Nos.8637 of 1999 and 12625 of 1999

R.Natesan — Petitioner in W.P.No.3637 of 1999
S.R.Mahalingam — Petitioner in W.P.No.12625 of 1999

Versus

1. The District Registrar,
   Salem.

2. Manur Kula Devangar Vasaga Salai,
   Salem.

3. Salem Suyamariyathai
   Sangam, Salem — Respondents in both the WPs

Prayer: Petitions filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, to call for the records of the first respondent in ROC.No.9898/A2/98 dated 08.09.1998 and quash the same. (in both Wps)

For Petitioners : Ms.A.Arulmozhi in WP.No.12625 of 1999
Mr.Suresh Viswanath in WP.No.8637 of 1999

For Respondents : Mr.V.Subbarayan Spl.G.P for R1.
Mr.K.Raman Raj for R2.
Mr.V.Srinivasan for R3.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

ORDER

The petitioners are the members of Salem Suyamariyadhai Sangam, founded by Periyar EVR in the year 1957 (R3 in these Writ Petitions). The objects of the Sangam is to spread Political knowledge and to make people to act according to the rational thinking; not to be slaves to superstition; to liberate the people from meaningless and unnecessary religious or social rituals in their daily habits; and to remove the caste, religion and Class differences in marriage. Bye-laws have been framed to foster the same objects. According to bye-law No.12, if the executive committee passes any resolution detrimental to the basic objectives, it will be prevented from being tabled in the General Body.

2. The second respondent/"Monurkula Devangar Vasaga Salai" was formed by the members of Telugu speaking Devangar Community. Its main objectives are to protect the interest of 'Telugu speaking Devangar Community'. No person other than Telugu speaking Devangar Community can become member in that association.

3. While so, the Registrar of Societies amalgamated both the societies. Originally, the third respondent society was composed of persons from all sections of people, but in course of time, it was dominated by a particular sections of community by induction of new members in such a manner they could dominate. One by name S.R.Mahalingam, S/o.S.P.Ramalingam wanted to become a member and he sent a communication to the third respondent as his father was one of the original members. But his request was rejected. This manipulation was only to grab the properties of the third respondent; and the amalgamation is mala fide. The resolution for amalgamation has been ordered on the ground that the objects of the two societies are identical which is not true. The second respondent is a caste based society whereas the third respondent is a society which is opposed to caste system. Therefore, the two societies cannot be amalgamated. Hence the order of amalgamation dated 8.9.1998 in ROC.No.9898/A2/98 has to be quashed as it is illegal.

4. No counter has been filed either by the second respondent or third respondent, though they have filed their counter affidavit in the stay petitions.

5. The first respondent has filed a counter in which it is

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

stated that Manurkula Devangar Vasaga Salai was registered on 14.03.1953 as No.5 of 1953. Its main objects are to promote, set up, run and maintain schools for boys and girls and for advancing of education. For that purpose, to establish laboratory, Reading Room, etc.,. On the basis of the above objects, the society established and is running a High School. It is in possession of immovable properties. Salem Suyamariyadhai Sangam was registered in the year 1957 as No.6 /1957. The Salem Suyamariyadhai Sangam association did not start or run any school. It has only reading room and laboratory. This association was in possession of immovable properties like shops and buildings. The two Sangam applied for amalgamation and submitted a copy of special resolution passed by them. After careful perusal of the resolution, exercising power conferred under Section 31 of the Act r/w Rule 28, and after satisfying about the intention of both the association, the request for amalgamation was approved in the impugned office proceedings. The impugned order is legal and valid. Hence, the writ petitions are liable to be dismissed.

6. The learned counsel appearing for the petitioner, Ms. Arulmozhi, submitted that the petitioner in WP.No.8637 of 1999 is a founder member and hence a life member. The objects of Salem Suyamariyadhai Sangam is to eradicate caste system and also to propagate the ideals of EVR Periyar such as rationalistic ideas and to persuade the people not to believe superstitions and also to prevent people from participating in religious and caste rituals and for that purpose to establish laboratories, reading rooms etc.,. From the typed set, she pointed out that this petitioner is a member from the date it was originally found. She also submitted that the impugned order has been passed on the mistaken assumption that both the societies have similar objects and that was the reason for accepting the request for amalgamation was accepted. This itself shows that the impugned order is liable to be set aside as it is contrary to the facts and opposed to the Act and Rules.

7. The second respondent society which has been found to promote the interest of particular community namely Telugu speaking Devangar Community, the objects of that society is to protect the interest of that particular community. While so, when the object of Salem Suyamariyathai Sangam is opposed to activities of caste or or religious association, and the objects of two association are diametrically opposed to each other. They cannot go together and therefore there was no basis for amalgamation, and hence the amalgamation has to be set aside.

8. The learned counsel referred to Section 12 of the Tamil Nadu Societies Registration Act which provides for amendment of

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

memorandum and the bye-laws. According to this section, a registered society may, by special resolution, amend its memorandum and the objects of the society so far as may be required to enable it to amalgamate with any other registered society and according to Section 12 (3). As per that provision amendment of the memorandum of bye-laws shall be registered and on such registration, it shall take effect from the date of passing of such special resolution. In this case, no such amendment has been made to the bye-laws or to the memorandum of the association. There can be no amalgamation, unless and until the bye-laws are amended in accordance with Section 12 of the Act. Further according to Section 30 of the Act, any two or more registered societies may with the prior approval of the Registrar, by special resolution of both or all such registered societies, become amalgamated together as one society, with or without any dissolution or division of funds of those registered societies or any of them. According to Sub-section (3) of Section 30 of the Act, "No amalgamation or division of a registered society under sub-section (1) or sub-section (2), as the case may be, shall have effect until and unless the new society or societies is or are duly registered in accordance with the provisions of the Act." Therefore, according to Section 30, a special resolution for amalgamation can be passed only with prior approval by the Registrar of societies. Therefore, the alleged resolution based on which the two societies have been amalgamated are not in accordance with the provisions of Section 30 (1). Therefore, that resolution is invalid and on that basis, there can be no further proceedings. Hence, the impugned order is liable to be set aside as it is not in accordance with the law.

9. Mr.Raman Raj, the learned counsel appearing for the second respondent submitted that the petitioners are not the members of the third respondent association. Therefore, they have no locus standi to file these writ petitions. Hence, on that ground of lack of locus standi alone these writ petitions are liable to be dismissed.

10. In reply to these contentions, the learned counsel appearing for the writ petitioners contended that the petitioner in W.P.No.8637 of 1999, Mr.R.Natesan is a founder member and hence he has got locus standi to file the writ petition. The learned counsel for the second respondent referred to the additional typed set of papers filed by him in which a resolution dated 25.04.1982 is found. Referring to this resolution he contended that the petitioner/Mr.R.Natesan was removed on that date and therefore he was no more a member from that date.

11. In this resolution, Serial Nos.1 to 6 refers to the fact that some persons have been 'removed' and some persons have been

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

'elected'; this resolution is under the following caption:

"The responsibility of the society is temporarily given to the following members."

By that resolution, some members were removed and some members were elected. One such person 'removed' is Mr.R.Natesan. Referring to this, learned counsel appearing for the petitioner submits that this is a resolution whereby this petitioner was removed from the executive committee and some other members were elected to constitute the executive committee. This is not a removal of the petitioner from the membership of the society. This contention is acceptable.

12. Thus the petitioner is proved to be a founder member and a life member of the association and hence a life member continue to be a member until and until removed by the society. There is no material to show that the petitioner's membership was cancelled or the petitioner was removed from the society on any day. Therefore, the contention of the second respondent that this Natesan, the petitioner was not a member is not acceptable and hence the contention that the petitioner has no locus standi is not acceptable.

13. The learned counsel for the respondent next submitted that the writ petition was filed assuming that it is a Co-operative society and the contents of the affidavit would go to show that the petitioner treated itself as a Co-operative Society and hence on that ground also the writ petition is liable to be dismissed. This argument of the learned counsel for the respondent is not acceptable. The prayer in the writ petition is to quash the impugned order. It is true that the original affidavit was filed as if the Cooperative societies act is applicable to the facts of this case. But, subsequently that has been corrected by amendment. Be that as it may, even assuming that they have not mentioned the correct provision of the Act or Law in the affidavit, it does not prevent the petitioner from advancing the argument on the basis of the societies Registration Act under which those societies were registered. A wrong mentioning of the Act does not require that the Court should reject the writ petition itself. Hence, this argument of the respondent is rejected.

14. The learned counsel for the second respondent next submitted that under Section 30 of the Societies Registration Act, the Registrar has got power to amalgamate any two societies provided there was a resolution to that effect by both the societies; This power is unlimited and unrestricted. He further contended that the provisions of Section 12 is not mandatory since the word used is "may". That is, under Section 12 of the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Act, such amendment and bye-laws may be made to amalgamate any other societies. The word used is "may" and not "shall". Therefore, it is only recommendatory and not mandatory. Therefore, failure to amend the bye-laws or memorandum does not preclude the societies from passing a resolution for amalgamation. This contention of the second respondent is not acceptable. Merely, because the word "May" is used in Section 12 (1), it does not make it recommendatory. A reading of Section 12 would show that for a registered society to be amalgamated with any other society, the registered society should pass a special resolution and bye-laws or memorandum should be amended and such bye-laws shall be registered.

15. The learned counsel appearing for the first respondent (Registrar) submitted that as per section 30, the Registrar has the power to amalgamate two societies since special resolutions were passed by both the societies, the Registrar accepted special resolutions and that they are in accordance with the provisions of law passed the impugned order amalgamating the societies which is not contrary to law. This argument is not acceptable for the following reasons:

16. On a combined reading of subsection(1) with subsection (3) of 12, it is clear that the word "may" appearing in subsection(1) has to be read as "shall". It is a well established principle that the word "May" may be read as "shall" and the word "shall" may be read as "May", in appropriate cases depending upon the facts and circumstance of each case. The word 'May' does not always mean 'May' and the word 'shall' need not always mean 'shall'. They can be read alternatively, depending on the context where it is used. Therefore, unless a registered society by special resolution amend the provisions of memorandum referring to the objects of the society so far as it may require to enable it to amalgamate with any other society, that society cannot be amalgamated. Under Section 30 of the Act, any two societies may pass a special resolution; But, such resolution shall be passed only with the prior approval of the Registrar. In this case, admittedly there was no prior approval by the Registrar. Therefore, inasmuch as the resolution passed by the society without the prior approval of the Registrar for amalgamation of the two societies is not in accordance with the provisions of Section 30(1) of the Tamil Nadu Societies Registration Act, 1975, the impugned order amalgamated by both the societies is not in accordance with law and therefore not legally sustainable.

17. That apart, from the resolution passed for amalgamation, as seen from the typed set filed by the learned counsel for the petitioner, is as follows:

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

By resolution dated 26.04.1998, the Monurkula Devangar Vasaga Salai by its General Body Meeting, passed a resolution as follows:

"சேலம் சுயமரியாதை சங்கம் பதிவு எண்.6/1957 என்ற ஒரே நோக்கமுடைய சங்கத்தை இந்த சங்கத்தின் விஸ்தரிப்பு வசதி முதலானவை கருதி இணைத்துக் கொள்வதென்றும் இரண்டு, சங்கங்களும் மநூர்குல தேவாங்க வாசக சாலை என்ற பெயரால் செயல்படுவது என்றும் சங்கங்களின் பதிவாளர் அவர்களிடம் ஒப்புதல் பெறுவதற்காக நடவடிக்கை மேற்கொள்ளப்படுவதென்றும் இச்சிறப்பு தீர்மானம் முலம் தீர்மானிக்கப்பட்டது."

That is, it is resolved to amalgamate the association by name Salem Suyamariyathai Sangam which has got the identical objects with this society, under the name Manurkula Devangar Vasaga Salai, in order to expand the facilities of the society, and for that purpose, necessary approval to be obtained from the Registrar. From the above recitals it is seen that after amalgamation, the society would be called by the name Manurkula Devangar Vasaga Sangam.

18. According to bye-law No.3, of Devangar Sangam, members of the society shall be Telugu speaking Devangar community people. Therefore, no person other than Telugu speaking Devangar Community can become a member of this society. Whereas in the Salem Suyamariyathi Sangam society is, any person of any caste, creed or religion or language can become member. Admittedly, at present, the third respondent society consists of members of all the categories without any caste, language or religion, when amalgamated under the name Manurkula Devangar Vasaga Salai, those members other than the Telugu speaking Devangarr Community people will become ineligible to be a member in that society, since the new society which will have the name 'Manurkula Devangar Vasaga Salai' and its by-law restricted the membership to the Telugu speaking Devangar community. Therefore, all other community people would be eliminated automatically from the new society. If they are not so eliminated, then the society would consist of members from all communities, whereas because of the name of "Devangar Sangam" and its bye laws, no person other than Telugu speaking Devangar Community can be the member. That would be contrary to the objects of that society. Amalgamation cannot result in elimination of any member for the reason stated above. Therefore, to amalgamate these two societies, the object of both the societies shall be amended. Such amendment would be opposed to very purpose for which these two societies were started and hence would be impermissible. Such a result is not contemplated when amalgamating two societies.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

19. For all these reasons, both the societies can never be amalgamated as their objects are diametrically opposed to each other.

20. In so far as WP.No.12625 of 1999, the petitioner has not substantiated that he is a member of the society. Therefore, he has no locus standi to file the writ petition.

21. In the result, W.P.No.3637 of 1999 is allowed as prayed for. W.P.No.12625 of 1999 is dismissed as not maintainable. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ksr

To
1. The District Registrar,
Salem.

1 cc to Mr. A. Arulmozhi, Advocate in SR. 1302
1 cc to Mr. V. Srinivasan, Advocate in SR. 985
2 ccs to Mr. R.M. Krishna raju, Advocate in SR. 943
1 cc to Govt. Pleader in SR. 1408 (WP. 8637/99)
1 cc to Govt. Pleader in SR. 1409 (WP 12625/99)

W.P.Nos.8637 of 1999
and
WP.No.12625 of 1999

PSI (CO)
kk 18.1.05

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/